

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-80898

WILBERT MILLER,

HONORABLE AVERN COHN

Defendant .

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ORDER

Defendant has filed a motion styled

Motion to Suppress and Request for an Evidentiary Hearing

The government has responded.

The motion is directed to a seizure, pursuant to a valid search of defendant's home based on probable cause to believe drug trafficking was occurring, of a miter saw, two (2) generators and two (2) air compressors. These items were, subsequent to the search and seizure, administratively forfeited. Defendant did not claim ownership or oppose the forfeiture which was done pursuant to state law. Given that the search was based on a valid warrant, the fact that the seizure of the items described were not directly included within the scope of the search warrant is not, by itself, a basis for suppressing the items

seized within the scope of the search warrant. The “[u]nlawful seizure of items outside a warrant does not alone render the whole search invalid and require suppression of all evidence seized, including that lawfully taken pursuant to the warrant. A flagrant disregard for the limitations of a search warrant might make an otherwise valid search an impermissible general search requiring the suppression of all evidence seized during the search. Absent flagrant action, however, the items covered by the warrant will be admissible.” U.S. v. Lambert, 771 F.2d 83, 93 (6th Cir. 1985) (internal citations omitted).

If the government offers the items seized which were not within the scope of that search warrant into evidence at trial, there is time enough to consider whether or not they were illegally seized and forfeited.

The motion is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: September 14, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, September 14, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160